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DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818; C-475-819]

Certain Pasta from Italy: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On June 22, 2016, the Department of Commerce (the Department) published its initiation and preliminary results in these changed circumstances reviews. Based on our analysis of the comments submitted by interested parties, our final results remain unchanged from the preliminary results.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jennifer Shore, Office I for AD/CVD

Operations, at (202) 482-2778; George McMahon, Office III for AD/CVD Operations, at (202) 482-1167; or Renee D'Antonio, Customs Liaison Unit for AD/CVD Operations, at (202) 482-1318, AD/CVD Operations, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 2016, the Department published a notice of *Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*¹ on certain pasta from Italy (1) in furtherance of the International Trade Data System (ITDS) initiative and U.S. Customs and Border Protection's (CBP) efforts to modernize the electronic submission of import documents using the Automated Commercial Environment (ACE), and (2) to align the scope language regarding certifications accompanying imports of organic pasta across the *AD/CVD Italy Pasta Orders*.²

Specifically, the Department preliminarily determined to: (1) convert the organic pasta certification submission requirement to a record-keeping requirement and to adjust the scope exclusion language to reflect this change, (2) authorize electronic submission of the certification when the certificate is requested by CBP or the Department, (3) update the scope language to remove the reference to the National Organic Program certificate, and (4) to align the certification language across the *AD/CVD Italy Pasta Orders* to reflect that the same certification authority (or authorities) is acceptable for purposes of both orders. Since the publication of the *Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, the Department received a single case brief, filed on July 6, 2016, on behalf of American Italian Pasta Company, Dakota Growers Pasta Company and New World Pasta Company (Petitioners). No interested party submitted a rebuttal brief.

¹ See *Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 81 FR 40659 (June 22, 2016) (*Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*).

² See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996); and *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy*, 61 FR 38544 (July 24, 1996) (collectively, *AD/CVD Italy Pasta Orders*).

Scope of the Orders

The scope of these orders covers shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of these Orders is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.³

The merchandise subject to the *AD/CVD Italy Pasta Orders* is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these Orders is dispositive.

Analysis of Comments Received

In their July 6, 2016, case brief, Petitioners agree with the Department's revision of the organic pasta exclusion to harmonize the scope language regarding certifications concerning imports of organic pasta across the *AD/CVD Italy Pasta Orders*. Petitioners, however, express concern regarding the Department's proposal to replace the requirement to file the organic certification at entry with a record-keeping requirement. Petitioners argue that because organic pasta is an excluded product, an exporter or importer dealing exclusively with organic pasta might never become subject to the Department's jurisdiction in an administrative review or other segment and would therefore, never be required to produce the certification. Additionally, Petitioners note that, at the outset of the *Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, the Department indicated it was initiating a changed circumstances review to change the requirement to submit an organic certification at

³ For a full description of the scope of these *AD/CVD Italy Pasta Orders*, see the Appendix to this Notice.

entry to a record-keeping requirement and to allow for electronic submission of the document. However, the Department did not further discuss the possible electronic submission requirement or how it would work.

Petitioners suggest that in lieu of, or in addition to, the record-keeping requirement, the Department should require importers to scan electronically and submit the organic certification using the Document Imaging System (DIS) in ACE so that the certification will be attached to each relevant entry. Petitioners conclude that the Department would have access to the certifications if the Department obtained copies of entry packages from CBP.

Department's Position:

The Department considered the comments submitted by Petitioners and continues to find that it is appropriate to convert the current requirement to submit the organic certification at entry to a record-keeping requirement. Petitioners have not provided any information to indicate that enforcement of the *AD/CVD Italy Pasta Orders* would be compromised by such a change. Under the record keeping requirement described in the preliminary results, both the exporter and the importer would be required to maintain a copy of the original certification in their respective records, as well as documentation supporting the certification, that would be subject to verification by the U.S. Government.⁴

With respect to our statement in the summary of the *Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews* regarding authorization for electronic submission of the certification, this was meant to refer to one manner through which a party could submit a certification, once requested by the Department or CBP. CBP or the Department may request that the certification and/or supporting documentation be submitted

⁴ See *Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 81 FR at 40660.

electronically, through the DIS component of ACE or in some other form or manner as required by the requesting agency. As further discussed in the *Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, should the Department or CBP have concerns about entries of pasta, either agency, or both agencies, may require submission of the certifications to substantiate a party's claim that the imported pasta meets the requirements of the organic pasta exclusion. As such, the importer, or the party filing on its behalf, would be required to submit the organic pasta certification upon request by CBP or the Department.

Absent evidence that the organic pasta certification record-keeping requirement undermines the enforcement of the *AD/CVD Italy Pasta Orders*, and because this change furthers the ITDS initiative and CBP's efforts to modernize the electronic submission of import documents using ACE, we find that it is appropriate to adopt the organic pasta certification record-keeping requirement. However, this Notice should not be construed as an indication that the Department relinquishes its ability to require the filing of the organic certification for each entry of pasta subject to the *AD/CVD Italy Pasta Orders*. If, at any time, either CBP or the Department becomes aware of evidence indicating that the elimination of the requirement to file the organic certification with each entry is undermining the enforcement of the *AD/CVD Italy Pasta Orders*, the Department can reconsider whether to require that the organic certification be filed with each entry, using the DIS for entries filed in ACE or through other means as appropriate.

Final Results of Changed Circumstances Review

After an analysis of the comments submitted, we continue to find that the organic pasta certification submission requirement should be converted to a record-keeping requirement. Under this record-keeping requirement, both the exporter and the importer are required to maintain a copy of the original EU authorized body certification in their respective records, as well as documentation supporting the certification, that would be subject to verification by the U.S. Government. Because this certification requirement will now be a record-keeping requirement, the exporter and importer are required to submit the certification in response to a request from CBP or the Department, in the form or manner required by the requesting agency (*i.e.*, electronically or otherwise). Additionally, the certification must be issued, signed, and dated prior to the exportation of the merchandise from Italy. Entries for which an exporter or importer is unable to produce the required certification and/or documentation supporting the certification upon the request of CBP or the Department may be subject to antidumping or countervailing duties.

In addition, we continue to find that the scope language relating to the organic pasta exclusion should be updated to: (1) reflect the conversion to a record-keeping requirement; (2) remove the reference to the National Organic Program certificate; and (3) align the certification language across the *AD/CVD Italy Pasta Orders* to reflect that the same certification authority is acceptable for purposes of both orders. Based on the foregoing, the Department adopts the revised scope of the *AD/CVD Italy Pasta Orders* to reflect the aforementioned changes. The full text of the revised scopes is found in the Appendix to this document.

Notification to Parties

This notice is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results are being issued and published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.216 and 351.221(b)(5).

Dated: January 6, 2017.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Appendix

Scope of the AD Order on Certain Pasta From Italy

Imports covered by this Order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the Order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this Order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the Order. Note 1. Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the Order. Note 2. Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the Order. Note 3.

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the Order is dispositive.

Note 1. *See* Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

Note 2. *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

Note 3. *See Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319, 58320 (September 29, 2014).

Scope of the CVD Order on Certain Pasta From Italy

Imports covered by this Order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the Order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this Order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the Order. Note 1. Pursuant to the Department's May 12, 2011, changed circumstances review, effective January 1, 2009, gluten free pasta is also excluded from the scope of the Order. Note 2. Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the Order. Note 3.

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the Order is dispositive.

Note 1. See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

Note 2. See *Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634 (May 12, 2011).

Note 3. See *Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319, 58320 (September 29, 2014).

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